

**MONTANA DEPARTMENT OF MILITARY AFFAIRS
INFORMATION SHEET
HOUSE BILL NO. 46**

**AMENDMENT OF SECTION 10-1-104; ADOPT MOST RECENT VERSION OF
FEDERAL MILITARY LAWS AND REGULATIONS**

INTENT

10-1-104, MCA: Amendment of section 10-1-104 (Federal regulations to govern) MCA, is a "Housekeeping" measure that allows Montana to adopt, as state law, the most recent version of federal military laws and regulations and apply them to the national guard of this state. This is a reoccurring bill as a result of the Montana Supreme Court's holding that the legislature may only adopt "existing" federal laws and regulations as state law (i.e., the legislature may not adopted changes in federal law "prospectively").

HB 46 substitutes "October 1, 2007" for "October 1, 2005", in subparts (1) and (2) of Section 10-1-104, MCA. The proposed date changes are needed to ensure that Montana can adopt, as state law, those military related federal laws and regulations that have changed since Section 10-1-104, MCA, was last amended in 2005. In 2005, the Montana Legislature amended these same subparts and substituted "October 1, 2005" for "October 1, 2003".

BACKGROUND

To the extent that they are applicable and not inconsistent with the Montana Constitution, the laws of this state, or with an adopted rule or regulation, Section 10-1-104, MCA, currently makes federal military related laws, regulations and, the Uniform Code of Military Justice ("UCMJ"), in effect on October 1, 2005, apply to and govern the national guard of the State of Montana.

Section 10-1-104, MCA, must be amended every legislative session as a result of the Montana Supreme Court's holding in Lee v. Montana, 195 Mont. 1, 635 P2d 128 (1981). In Lee, the MT Supreme Court held that the legislature has the right to adopt "existing" federal laws and regulations as state law, but does not have the right to adopt changes in the federal laws and regulations that are to occur some time in the future (i.e., prospectively).

CONCLUSION

HB 46 allows Montana to adopt, as state law, the most recent version of federal military related laws and regulations as state law. Adoption of federal military related laws and regulations, as state law, is vital to meeting the unique needs, missions, and operations of the military forces within the state. It also provides continuity for our state military personnel who are required to perform both state and federal service.

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